IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 420 of 1990

WITH

CIVIL APPLICATION No 1322 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHATURBHAI PATEL

Versus

DEVANG NAVINCHANDRA DAVE

Appearance:

1. Special Civil Application No. 420 of 1990
MR BA SURTI for Petitioner No. 1
MR HJ NANAVATI for Respondent No. 1-2
MS ARCHANA RAWAL, AGP for Respondent No. 3-4

2. Civil Application No. 1322 of 1990
MR HJ NANAVATI for Applicants.
MR BA SURTI for Respondent No.1.
MS ARCHANA RAWAL, AGP for Respondent No. 2-3.

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 03/03/2004

ORAL JUDGEMENT

The present petition is filed under Article 226 of the Constitution of India challenging the order passed by the Gujarat Secondary Education Tribunal, Ahmedabad in Applications No. 235 of 1987 & 412 of 1987 on 29.03.1989 whereby both these applications were allowed by the Tribunal and the petitioner's school was directed to pay to the applicants compensation equal to six month salary including allowances for the first five years and further amount of compensation equal to two months basic salary for the other two years of service which they have put up in the petitioner's school.

2. This Court has admitted the petition on 24.01.1990 and ad-interim relief was granted staying the execution and operation of the judgment and order of the Tribunal dated 29.03.1989 which was under challenge. The said ad-interim relief was confirmed on 07.08.1991. However, the petitioner was directed to file an undertaking before this Court within two weeks from the date of the said order, to the effect that in case the petitioner was required to act according to the order of the Tribunal, the amount that was required to be paid in terms thereof would be paid by the petitioner's school with interest at the rate of 18% p.a. from the date of ad-interim order i.e. 24.01.1990 till the amount has been actually paid.

3. It is the case of the petitioner that due to reduction of numbers of students for the year 1985 1986, the petitioner applied for reduction of classes. The respondent authority granted permission by his order dated 07.02.1987 and accordingly two classes came to be reduced. As a result of reduction of these two classes, the respondent Nos.1 and 2 who were teachers came to be declared surplus by the same order and it was directed that they should be continued till their absorption in another school. The respondent Nos.1 & 2 were accordingly continued in the petitioner's school till they were absorbed and appointed in another school as per the order of the respondent No.3. The respondent Nos.1 & 2 were continued in the petitioner's school and there was no break in their service.

4. It was further stated that respondent Nos.1 & 2 joined the school, namely, Shri Sarvajanik Vidyalaya and

Shavarshi School from February 1987 respectively and all their relevant papers including pay fixation, relieving order, Service Book, G.P.F. and Family Pension nomination, exercise of option etc. were sent to the concerned schools. The respondent Nos.1 & 2 thereafter filed an application before the Gujarat Secondary Education Tribunal being No. 235/87 & 412/87 and claimed compensation on the basis of Regulation 33 of Gujarat Secondary Education Regulation, 1974. After considering the arguments of the learned advocates appearing for the respective parties and after considering the earlier orders passed by this Court in respect of the issue involved in that application, the Tribunal has allowed the said applications and directed the petitioner's School to pay the compensation as stated above.

5. It is this order which is under challenge in the present petition.

6. Mr. B.A. Surti, learned advocate appearing for the petitioner submits that the Tribunal has failed to appreciate that there was termination of service of respondent Nos.1 & 2. The judgments relied on by the Tribunal were in respect of cases of termination of service whereby there was break in service. The respondent Nos.1 & 2 have not to suffer any single day salary and have not even lost their seniority from service because their services were continued till February 1987 in the school of the petitioner Trust and thereafter, their services were continued in other schools. The services of respondent Nos.1 & 2 were covered by the State Government Education Department Memo dated 15.06.1987. Mr. Surti has further submitted that the Tribunal has committed a grave error in law and on facts in holding that the Govt. Resolution dated 12.04.1988 was not applicable to the case of the respondent Nos.1 & 2 despite the fact that in the said Resolution, the Govt. has merely clarified what was the original position and as such, the said Resolution was squarely applicable to the facts of the case of respondent Nos.1 & 2.

7. Mr. H.J. Nanavati, learned advocate appearing for respondent Nos.1 & 2 has strongly defended the order passed by the Tribunal. He has submitted that teacher's right to compensation is an unconditional right and the Management is bound to pay compensation as required by Regulation 33 irrespective of the fact whether the employee has suffered any loss in terms of money or break in service etc. or irrespective of availability of grant in respect of amount of compensation. The provision

contained in Regulation 33 (1) are analogous to the provisions contained in Section 25 (F) of the I.D. Act and that Regulation 33 (1) not only presupposes loss in employee whose services are terminated but also quantified loss on the basis of the length of service in a particular school. The Tribunal has rightly relied on the decision of this Court rendered in S.C.A. Nos. 506 & 507 of 1980 decided on 12.09.1983 wherein it is held that even if after termination, the employee is absorbed in some other school by the department, the employee should not lose the right to compensation under Regulation 33. The same view has been taken by another Division Bench of this Court in S.C.A. No. 1173/84 decided on 01.05.1984 wherein it was held that secondary teachers would be entitled to compensation as soon as they are retrenched without any stigma or class reduction. He has lastly submitted that Regulation 33 as on the statute book upto 11.04.1988 leaves no scope of an exception for awarding compensation to a confirmed secondary employee even if such employee is terminated by way of simple termination and even if he is absorbed in some other school. The amendment in Regulation 33 comes into force with effect from 12.04.1988 and prior to that respondent Nos.1 & 2 were declared surplus and hence, the said amendment has no retrospective application to the facts of the petitioners' case. The Tribunal's order does not call for any interference by this Court while exercising the powers under Article 226 of the Constitution of India.

8. Ms. Archana Rawal, learned AGP appearing for the State of Gujarat i.e. respondent No.3 has also supported the case of the petitioner stating that respondent Nos.1 & 2 are not entitled to the compensation as they were absorbed in other school and there was no break in their services.

9. After having heard learned advocates appearing for the respective parties and after having gone through the impugned order of the Tribunal, the Court is of the view that the Tribunal has simply relied on the earlier judgments of this Court by giving numbers of those judgments and recording findings arrived at by the Court on the basis of facts found therein. However, no much discussion was found as to whether the ratio of those judgments are applicable to the facts of the present case. The Tribunal has not given any independent reasoning on the issue involved in the application before it. The learned advocates are not in a position to produce the copies of the judgments referred to by the Tribunal in its order. The Court has, therefore, called

for the original judgment file and found that as far as S.C.A. No. 1173/84 is concerned, the Court has relied on the decisions of this Court in S.C.A.No. 427/1980 and S.C.A. No. 663/76 decided on 22.04.1980. The Court has further observed in this judgment that "as a matter of fact, the Division Bench in S.C.A. No. 427/80 has, in terms, considered as to whether the provision contained in Regulation 33 is reasonable or not. It may be that this additional aspect which has been pressed into service for challenging the regulation 33 as arbitrary may not have been pressed before the Division Bench in the same terms in which it has been urged before us. Nonetheless, the broad challenge of the provision being unreasonable and, therefore, violative of Article 14 has been considered by the Division Bench. We, therefore, do not think that we would be justified in admitting this petition." The Court, however, while rejecting the admission of the petition has recorded the statement of the respondent teachers to the effect that the protected teachers are merely promised in the matter of employment and that they are not guaranteed and assured employment by the State. Since the Tribunal has referred to the decisions of this Court in S.C.A. No. 506 & 507 decided on 12.09.1993 and S.C.A. No. 1173/84 decided on 01.05.1984 and these two judgments of two different Division Bench again refer to the earlier judgment of the Division Bench in S.C.A. No. 663/76 and 427/80, the original judgment file of these two decisions were also called for. In S.C.A. No. 663/76 decided on 22.04.1980, the issue was whether Regulation 36 is ultra vires Sec. 54 of the Act and whether the respondent No.1 was not a secondary teacher from 1955 to 1965 and, therefore, he was not entitled to compensation for that period under Regulation 33. This Court has taken the view that Regulation 33 was not invalid and it was not hit by any provision of the Gujarat Secondary Education Act, 1972 nor did the State Government suffer from want of power in making that Regulation. As far as the second issue is concerned, this Court has observed that the finding recorded by the Tribunal was a finding of fact which cannot be interfered in writ petition. The controversy raised in the present petition was not there before this Court in S.C.A. No. 663/76.

10. As far as S.C.A. No. 427/80 is concerned, the Division Bench in para 5 of its judgment while dealing with the contention raised by Mr. Shelat, learned advocate appearing for the petitioner that teachers, on their services having been terminated, by the very State Government's policy decision, got immediately service in another school receiving grant-in-aid and, therefore,

there was perceptibly no loss which would call for any compensation. When the conditions attached to termination of service were being provided for, there cannot be any such statutory guarantee of protection. The protection was available to such a surplus teacher because of the administrative decision of the Govt. and in some cases it may be available and in the others it may not be available. Secondly, even if such a teacher got an employment in another aided school, some type of loss of service benefit was bound to accrue. As for example, in the matter of seniority, if such a teacher absorbed in another secondary school came to be retrenched, so to say, in the form of his termination of service because of the surplusage of his, he would get compensation only on the basis of the service rendered in that later school. So, such a fortuitous circumstance of the teacher being employed elsewhere under the Govt's administrative policy decision, cannot be a factor that can be pressed into service while dealing with the vires of Regulation 33 of the Act.

11. From the above observations of this Court while deciding S.C.A. No. 663/76, 420/87, 506 & 507/80 & 1173/84, this Court is of the view that the facts of the present case with that of the earlier cases are quite different. So far as earlier cases are concerned, the Court was mindful of the fact that there was no assurance or guarantee to the effect that surplus teachers would be absorbed in other school nor there was the assurance regarding continuity of service with all monetary benefits. As against this, in the present case, despite the fact that respondent Nos.1 & 2 were declared surplus teachers by virtue of an order passed by the respondent No.4 on 07.02.1987, they were continued in the school of the petitioner till they were absorbed in other schools. They were also paid regular salary and there was no break in their service. It is worthwhile to mention here that the education department has issued a memorandum on 15.06.1987 wherein it was made clear that in Non-Govt. secondary school, because of the reduction of class or closure of school or for any other reason, if the employee became surplus, a provision was made to absorb them in other schools and till such employees are absorbed in other school, they were paid all their salaries and wages and their continuity of service was also maintained. It was also made clear that they were not to be treated as surplus teachers and their services did not come to an end within the meaning of Regulation 33 of the Gujarat Secondary Education Regulation, 1984 and hence, there was no question of making any compensation to them. The directions were issued to the

Gujarat Secondary Education Board under Section 48 of the Gujarat Secondary Education Act, 1972.

12. Pursuant to this, a Govt. Resolution was passed on 12.04.1988 wherein an amendment was made in Regulation 33 and it was made clear that surplus teachers would not be entitled to compensation.

13. Here in the present case, it is an admitted position that respondent Nos.1 & 2 were continued in the school run by the petitioner till they were absorbed in other schools. They have been paid their salaries with all other monetary benefits. On their absorption in other school, their entire service records were transferred to those schools and their continuity of service was maintained. So, the apprehension which was expressed in the earlier judgments of this Court dealing with those cases, has no role to play so far as the present matter is concerned as in the present case, it is on record that they have not suffered any monetary loss nor their services were broken and they were entitled to all benefits as if they were continued employees.

14. In the above background of the matter, this Court is of the view that even if the Resolution dated 12.04.1988 has come into force after the respondent Nos.1 & 2 were declared surplus, still they were not entitled to claim compensation as the compensation is awarded only to those employees or teachers who were retrenched and by virtue of that retrenchment, they have suffered some monetary loss or their services were broken. This underlying idea of Regulation 33 was explained by the amendment and the same would also cover the field even prior to such amendment if the facts are of present nature.

15. In view of the above facts and circumstances of the case and in view of the discussion made hereinabove, this Court is of the view that the Tribunal is not right in holding that the respondent Nos.1 & 2 are entitled to compensation in accordance with the Regulation 33. Since the judgments relied on by the Tribunal while arriving at the aforesaid conclusion are distinguishable on facts, the same would not support the case of respondent Nos.1 & 2. The petition is, therefore, allowed. The impugned order passed by the Tribunal is hereby quashed and set aside. Rule is made absolute without any order as to costs.

16. In view of the order passed in main petition i.e. S.C.A. No. 420 of 1990, Civil Application No. 1322 of

1990 does not survive and hence, it is accordingly disposed of.

[K.A. PUJ, J.]

#Savariya#

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